

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-051374

06/27/2011

HONORABLE LINDA H. MILES

CLERK OF THE COURT
L. Carlson
Deputy

APEX L P, et al.

JON A TITUS

v.

PHOENIX ADVANTAGE GROUP L L C, et al.

PHOENIX ADVANTAGE GROUP L L C
P O BOX 5258
SCOTTSDALE AZ 85261

CLEMENT ANDERSON
P O BOX 5258
SCOTTSDALE AZ 85261
GREATER PHOENIX CAPITAL L L C
P O BOX 5258
SCOTTSDALE AZ 85261
A/ P HOLDINGS L L C
P O BOX 5258
SCOTTSDALE AZ 85261
CAPITAL DEPOT L L C
P O BOX 5258
SCOTTSDALE AZ 85261
CHRISTOPHER PREISEL
P O BOX 5258
SCOTTSDALE AZ 85261

MINUTE ENTRY

Courtroom 106-NE

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9:08 a.m. This is the time set for telephonic status conference. Counsel, David Fitzgerald, is present for Plaintiff. Defendant, Clement Anderson, is present appearing on his own behalf.

A record of the proceeding is made by audio and/or videotape in lieu of a court reporter.

This morning the Court received "Plaintiff's Motion to Convert Status Conference from Telephonic Appearance to Personal Appearance; Plaintiffs' Motion to Require Defendants Designated as Limited Liability Companies to Appear Through Counsel; and Plaintiffs' Motion for Expedited Consideration" electronically filed June 21, 2011.

Plaintiff's Motion to Convert today's Status Conference from Telephonic Appearance to Personal Appearance is denied because it was not submitted in sufficient time for the Court to rule in advance.

Plaintiff's Motion to Require Defendants Designated as Limited Liability Companies to Appear through Counsel is granted.

Defendants Phoenix Advantage Group, LLC, Greater Phoenix Capital LLC, and A/P Holdings LLC shall have until August 26, 2011 to retain counsel and file a notice of appearance of counsel. Should these Defendants fail to file a notice of appearance of counsel by that date their Answer to the Complaint may be stricken and default may be entered against them.

Plaintiff's Motion for Expedited Consideration is denied for reasons stated on the record.

COMPREHENSIVE PRETRIAL CONFERENCE SET

IT IS ORDERED setting a telephonic Comprehensive Pretrial Conference on **August 31, 2011 at 9:00 a.m.** (time allotted: 15 minutes) in this Division:

The Honorable Linda H. Miles
Maricopa County Superior Court
Northeast Regional Court Center
18380 N. 40th Street, Courtroom 106
Phoenix, Arizona 85032
(602) 506-6452

Plaintiff shall be responsible for initiating the conference call by calling this Division at **602-506-6452** with all participating parties and counsel on the line at the date and time specified above. Telephonic appearances shall be made from a **LANDLINE** and **NOT** a cellular phone.

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COUNSEL PARTICIPATING IN THE CONFERENCE CALL SHALL BE KNOWLEDGEABLE ABOUT THE CASE AND ITS STATUS, AND SHALL HAVE AUTHORITY TO MAKE DECISIONS ABOUT SCHEDULING AND OTHER MATTERS RELATED TO THE CASE.

NOTE: The parties are advised that this Division does not set a trial date until completion of private mediation or a settlement conference through a Judge pro tem.

JOINT PRETRIAL CONFERENCE MEMORANDUM

IT IS ORDERED:

Counsel and any self-represented litigants are to meet personally before the Pretrial Conference to discuss those subjects listed under Arizona Rules of Civil Procedure, Rule 16(b) or 16(c) (if a medical malpractice case). The parties shall prepare and file a Joint Pretrial Conference Memorandum **no later than five judicial days before the conference** addressing all applicable subjects listed under Rule 16(b) or 16(c), as applicable, and including proposed discovery and disclosure deadlines. Proposed dates in the memorandum shall be stated as **dates certain** (e.g., January 5, 2011) and not, for example, as “90 days before trial.”

The Joint Pretrial Conference Memorandum shall begin with a brief description of the nature of the case and the contested issues, as well as the estimated length of the trial. In addition, it shall include deadlines for the disclosure of expert and non-expert witnesses and an agreed-upon schedule for completion of discovery. As far as can reasonably be anticipated, each party shall set forth the depositions they anticipate taking and the approximate time required for each; any and all medical examinations which may be required of any of the parties; the person or persons to conduct such examinations; all requests for production; and all tangible evidence to be disclosed or exchanged.

If the parties agree to the deadline dates, they shall prepare a proposed scheduling Order in the form set forth below, containing the provisions which are applicable to the case. If the parties are unable to agree on any of the provisions that are to be included in the Order, the reasons for their inability to agree shall be set forth in the Joint Pretrial Conference Memorandum, and the parties shall submit a proposed Order without dates included.

If a Joint Pretrial Conference Memorandum is not timely submitted, the Court will place the matter on the Inactive Calendar for dismissal. Counsel are reminded that the Court may impose sanctions against counsel and/or the parties for failure to participate in good faith in the Joint Pretrial Conference Memorandum or the Pretrial Conference.

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NOTE: If the Joint Pretrial Conference Memorandum and proposed form of order are eFiled, the proposed form of order must be submitted in Word format, **not PDF or Word Perfect format**, to enable the Court to make changes/corrections thereto.

PROPOSED LANGUAGE FOR ORDER:

The Court has received and reviewed the parties' Joint Pretrial Conference Memorandum. In accordance therewith,

IT IS ORDERED:

1. Plaintiff's final expert witness disclosure (in accordance with Ariz.R.Civ.P., Rule 26.1 (a)(6)) shall be served by _____, **2011.**
2. Defendant's final expert witness disclosures (in accordance with Ariz.R.Civ.P., Rule 26.1 (a)(6)) shall be served by _____, **2011.**
3. Any rebuttal expert witness disclosures (in accordance with Ariz.R.Civ.P., Rule 26.1 (a)(6)) shall be served by _____, **2011.**
4. Final non-expert witness disclosures (in accordance with Ariz.R.Civ.P., Rule 26.1 (a)(3)) shall be served by _____, **2011.**
5. All discovery shall be completed by _____, **2011.** Any written discovery must be propounded far enough in advance of this date to allow for responses to be served in accordance with the Rules prior to this date.
6. The parties shall participate in private mediation by _____, **2011.**

OR

The parties shall participate in a mandatory Settlement Conference. This matter is referred to the Court's Alternative Dispute Resolution Office for the appointment of a judge *pro tempore* to conduct a settlement conference.

Counsel and/or the parties will receive a minute entry from ADR appointing the Judge pro tempore. Counsel and any self-represented litigants shall contact the appointed judge pro tempore to arrange the date, time and location for the settlement conference. The judge *pro tempore* is requested to conduct a settlement conference not later than _____, **2011.** The Office of

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Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office.

7. All dispositive or partially dispositive motions shall be filed by _____, **2011**.
8. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be allowed at trial other than those disclosed in a timely manner, except for good cause shown or by written agreement of the parties.
9. A telephonic status conference is set for _____, **2011** at _____ **m.** for the purpose of assigning a trial date if the case has not settled.

NOTE: Plaintiff shall be responsible for initiating the conference call by calling this Division at **602-506-6452**, with all participating parties and counsel on the line, at the date and time specified above.

10. Should any discovery disputes arise, any party seeking a discovery order shall, prior to filing discovery motions, meet and confer pursuant to Ariz.R.Civ.P., Rule 37(a)(2)(C). Counsel are advised that, as the Court interprets Rule 37(a)(2)(C), an exchange of correspondence between counsel is **not** sufficient to satisfy the “personal consultation” requirement of the Rule, except in extraordinary circumstances. At a minimum, counsel must speak to each other by telephone to attempt to resolve the dispute in good faith before involving the Court. Counsel are further advised that after the personal consultation referenced above, the Court is available to discuss, by joint telephone call, discovery disputes or any other matter that may impact the parties’ ability to resolve this case in a just, speedy and inexpensive manner. See Rule 1, Ariz.R.Civ.P.
11. The dates set forth in this Order are **FIRM** dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.
12. This case is removed from the Inactive Calendar and all requirements of Rule 38.1, Ariz.R.Civ.P., are waived until otherwise ordered by the Court.

9:28 a.m. Matter concludes.

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ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.